

Tuesday, March 20, 2007

The Board met at its offices at 450 N Street, Sacramento, at 10:41 a.m., with Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING

M. J. Hannigan and S. A. Hannigan, 346086

2002, \$2,189.00 Claim for Refund

For Appellant:

Dan Swart, CPA

For Franchise Tax Board:

Diane Ewing, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether respondent Franchise Tax Board properly denied appellants' claim for refund.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 10:57 a.m. and reconvened at 11:02 a.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Parquette Industries, Inc., 283835 (JH)

4-1-01 to 3-31-04, \$104,170.39 Tax, \$10,184.19 Penalty

For Petitioner:

Richard Parquette, Taxpayer

Nan Parquette, Taxpayer

For Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has shown that the audited differences between reported and recorded taxable sales are overstated.

Whether petitioner was negligent.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Johnny L. Morris, 307080 (KH)

1-1-03 to 12-31-04, \$110.00 Tax, \$75.00 Processing Fee

For Claimant:

Johnny L. Morris, Taxpayer

For Department:

Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether Business and Professions Code section 16102 exempts claimant's otherwise taxable sales from local sales and use tax.

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Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Daugherty and Daugherty, Inc., 311686 (KH)

10-1-04 to 12-31-04, \$3,179.00 Interest on Late Prepayment

For Claimant: Scott M. McAllister, Controller

For Department: Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether claimant should be relieved of interest imposed on its late Electronic Funds Transfer prepayment of tax.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Edvin Yonan, 222794 (KH)

10-1-99 to 6-30-02, \$30,179.01 Tax

For Claimant: Michael S. Warda, Attorney

Edvin Yonan, Taxpayer

Benjamin Hetrick, Accountant

For Department: Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Are any portions of the claims barred by the statute of limitations.

Whether the amounts allowed as trade-in credits against the purchase of property at a price greater than the trade in property should be allowed as returned merchandise deductions.

Whether the finality penalty should be relieved and the portion of the payment for this penalty not barred by the statute of limitations refunded.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

LEGAL APPEALS MATTERS, CONSENT

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Shaukat Maredia, 281738, 281739, 282003 (ET & ARH)

11-1-00 to 3-31-01, \$511,673.10 Tax, \$179,085.59 Penalty

6-1-99 to 6-30-02, \$641,186.84 Tax, \$224,415.49 Penalty

1-1-99 to 12-31-00, \$540,257.92 Tax, \$135,064.50 Penalty

Action: Redetermine as recommended by the Appeals Division.

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Triad ML Marketing, Inc., 287326 (OHB)

7-1-99 to 6-30-02, \$96,544.34 Tax, \$9,654.43 Penalty

Action: Redetermine as recommended by the Appeals Division.

Computerworks of Sacramento, Inc., 336131 (KH)

10-10-04 to 12-31-04, \$496.00 Tax, \$49.60 Penalty

Action: Redetermine as recommended by the Appeals Division.

Monterey Information Technologies, 308725 (GHC)

7-1-99 to 1-31-03, \$631,873.70 Tax, \$63,714.13 Penalty

Action: Redetermine as recommended by the Appeals Division.

Desert Sky Charter, Inc., 282883 (UT)

January 15, 2000, \$94,132.50 Tax

Action: Redetermine as recommended by the Appeals Division.

Wilson Lai, 388071 (ET)

November 7, 2006, \$1,650.50 Approximate Value

Action: Determined that staff properly seized the tobacco products.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Mohammed Amin, 283192

2001, \$2,421.00 Assessment

Action: Sustain the modified action of the Franchise Tax Board.

Keith C. Beard, 342165

1983, \$13.00 Claim for Refund

1984, \$771.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Butch Berry, 344963

2003, \$1,366.00 Tax, \$341.50 Late Filing Penalty, \$341.50 Notice and Demand Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Intech, LP, 350466

2000, \$940.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

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Robert J. Kavanaugh (Deceased), 348937

2002, \$21,314.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Patricia Mosby, 312756, 315341, 330539

2001, \$5,078.00 Assessment, \$1,269.50 Delinquent Filing Penalty

2002, \$5,246.00 Assessment, \$1,311.50 Delinquent Return Penalty

2003, \$4,786.00 Assessment, \$1,196.50 Delinquent Return Penalty, \$1,360.50 Failure to File Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$4,500.00 frivolous appeal penalty.

Michael W. Peterson, 349310

2004, \$1,312.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Bryon E. Vournazos, 341973

1999, \$58,735.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board

Alex C. Walker, 350032

2002, \$462.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Daniel Beckley, 339528

2000, \$3,404.00 Claim for Refund

Action: Sustain the action with concession by the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

The Board deferred consideration of the following matters: *Joyce Coleman, 349371.*

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Joyce Coleman, 349371

2005, \$400.00

Action: The Board took no action.

Bexie C. Elliott (Deceased), 348655

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

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Florin Gruia, 345695

2004, \$349.00

Action: Sustain the action of the Franchise Tax Board.

Dianne Johnson, 350281

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Vernon L. Just, 347712

2005, \$350.00

Action: Sustain the action of the Franchise Tax Board.

Bertha Maciel, 348960

2005, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Robert G. Maldonado, 361008

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Iosif Milgram, 362196

2006, \$332.50

Action: Sustain the action of the Franchise Tax Board.

Tinnette Taylor, 359816

2005, \$347.50

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES
AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Perkinelmer Instruments, Inc., 311274 (EA)

7-1-00 to 6-30-03, \$4,656,746.68

Action: Approve the redetermination as recommended by staff.

Harper Collins Publishers, Inc., 354514 (OHB)

10-1-01 to 12-31-04, \$80,512.68

Action: Approve the redetermination as recommended by staff.

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Bill Herigstad, 296293 (EH)

1-1-97 to 9-30-03, \$259,715.57

Action: Approve the redetermination as recommended by staff.

Gene Johnson, 361959 (BH)

7-1-03 to 12-31-03, \$79,100.00

Action: Approve the redetermination as recommended by staff.

Viviana Norma Magee, 379938 (CH)

10-1-00 to 6-30-01, \$319,341.84

Action: Approve the redetermination as recommended by staff.

United Airlines, Inc., 220984 (OHA)

7-1-00 to 12-8-02, \$2,915,870.86

Action: Approve the redetermination as recommended by staff.

IAC Search & Media, Inc., 384781 (CH)

7-1-96 to 6-30-05, \$193,798.56

Action: Approve the relief of penalty as recommended by staff.

Vernon C. Sorenson, M.D., P.C., 382231 (UT)

10-11-02 to 10-11-02, \$156,548.54

Action: Approve the denial of claim for refund as recommended by staff.

Nativeson Media, Inc., 383800 (AS)

1-1-03 to 6-30-03, \$72,241.66

Action: Approve the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105 in *Mercedes-Benz USA, LLC, 373139*; and, *Verizon Wireless (Vaw), LLC, 206280*, the Board made the following orders:

Point.360, 327443 (AC)

4-1-02 to 6-30-05, \$876,473.50

Action: Approve the refund as recommended by staff.

Citizen Watch Company of America, Inc., 378295 (AS)

10-1-05 to 12-31-05, \$54,824.88

Action: Approve the refund as recommended by staff.

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Ace Cogeneration Company, LP, 386752 (EH)

1-1-05 to 3-31-05, \$57,675.83

Action: Approve the refund as recommended by staff.

Century Theatres, Inc., 382748 (JH)

4-1-01 to 12-31-05, \$581,892.28

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 373139 (KH)

9-13-06 to 11-22-06, \$297,240.00

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Janssen Pharmaceutica, Inc., 382981 (OHB)

10-1-02 to 12-31-05, \$130,907.33

Action: Approve the refund as recommended by staff.

Verizon Wireless (VAW), LLC, 206280 (OHB)

4-1-00 to 6-30-02, \$87,752.34

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 87105.

Nativeson Media, Inc., 245535 (AS)

1-1-03 to 6-30-03, \$73,220.80

Action: Approve the refund as recommended by staff.

Veritas Software Global Corporation, 311405 (GH)

7-1-01 to 3-31-04, \$104,140.55

Action: Approve the refund as recommended by staff.

Onyx Acceptance Corporation, 215631 (EAA)

10-1-01 to 9-30-05, \$2,209,180.67

Action: Approve the refund as recommended by staff.

International Demographics, Inc., 313115 (OHC)

1-1-97 to 6-30-06, \$148,284.76

Action: Approve the refund as recommended by staff.

Harley-Davidson Credit Corporation, 331820 (OHA)

1-1-02 to 9-30-05, \$497,612.00

Action: Approve the refund as recommended by staff.

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SPECIAL TAXES MATTERS, RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Relief of Penalties, Consent Agenda, upon a single motion of Ms. Chu, seconded by Mr. Leonard and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 in *Hudson Insurance Company, 355861*; and, *Preferred Employers Insurance Company, 384861*; the Board made the following orders:

Hudson Insurance Company, 355861 (ET)

1-1-05 to 3-31-06, \$92,163.80

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Pacific Groservice, Inc., 378399 (ET)

8-1-06 to 8-15-06, \$54,344.11

Action: Approve the relief of penalty as recommended by staff.

Preferred Employers Insurance Company, 384861 (ET)

10-1-06 to 12-31-06, \$105,772.90

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9 the Board made the following orders:

ING USA Annuity & Life Insurance Company, 329453 (ET)

1-1-04 to 12-31-04, \$61,328.42

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

New York Life Insurance Company, 379716 (ET)

1-1-05 to 12-31-05, \$1,083,104.88

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

LEGAL APPEALS MATTERS, ADJUDICATORY**Lynne Meredith, 241993 (EA)**

10-1-98 to 12-31-00, \$49,098.76 Tax, \$4,909.88 Penalty

Considered by the Board: Hearing Notice Sent – Appearance Waived

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Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

General Electric Capital Corporation, 104862 (OHC)

1-1-94 to 12-31-99, \$Undetermined

Considered by the Board: January 31, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Mr. Leonard moved that the petition be granted. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee and Ms. Chu voting no, Ms. Mandel not participating in accordance with Government Code section 87105.

The Board deferred consideration of this matter.

Paragon Industries, Inc., 219180, 246246 (KHO)

1-1-00 to 12-31-02, \$10,699.78 Tax

Considered by the Board: July 18, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY

Speakers: Keith A. Shibou, CPA, Accounting Corporation

Yichi Gu, 318261

2002, \$394.79 Claim for Refund

2003, \$284.00 Claim for Refund

2004, \$219.59 Claim for Refund

Considered by the Board: September 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Angelina Mike, 262040

2000, \$31,856.00 Claim for Refund

Considered by the Board: September 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Steel moved that the petition be granted. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

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Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu, and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS,
ADJUDICATORY**

Linda Bradley, 354190

2004, \$347.00

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Marcos Prieto, 339280

2005, \$347.50

Considered by the Board: August 29, 2006

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES
AND DENIALS OF CLAIMS FOR REFUND, ADJUDICATORY**

Freeman Decorating Company, 361420 (OHC)

10-1-99 to 12-31-02, \$324,287.02

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the relief of penalty as recommended by staff.

Films For the Humanities & Sciences, 377739 (OHB)

4-1-98 to 3-31-03, \$69,793.99

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the relief of penalty as recommended by staff.

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Edwin M. Culver, 350298 (GHC)

1-1-03 to 3-31-06, \$135,434.00

Considered by the Board: December 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the denial of claim for refund as recommended by staff.

SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY

Cirilo Montes, 361150 (EH)

6-1-02 to 9-30-03, \$94,304.72

Considered by the Board: December 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the credit and cancellation as recommended by staff.

Infinity Material Management Solutions, 379564 (GH)

1-1-01 to 12-31-02, \$99,606.48

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board took no action.

Kawasaki Motors Corporation USA, 353580 (EAA)

4-1-02 to 3-31-05, \$294,116.97

Considered by the Board: December 12, 2006

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Waveprecision Corporation, 266539 (OHB)

10-1-03 to 12-31-03, \$51,984.24

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Westamerica Bank, 374792 (JH)

4-1-06 to 6-30-06, \$66,537.69

Considered by the Board: February 1, 2007

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Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Revlon Consumer Products Corporation, 355893 (OHB)

10-1-01 to 12-31-03, \$94,587.18

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Kyphon, Inc., 350261 (GH)

7-1-02 to 6-30-05, \$92,383.68

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Infinity Material Management Solutions, 243831 (GH)

10-1-00 to 12-31-01, \$106,535.82

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: The Board took no action.

TASQ Technology, Inc., 355544 (KH)

10-1-03 to 6-30-06, \$205,051.45

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Puget Sound Leasing Company, Inc., 339181 (OH)

1-1-04 to 9-30-05, \$184,680.74

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

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Universal Security System, Inc., 374229 (EA)

1-1-03 to 12-31-05, \$201,631.38

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

Lockheed Employment Services, Inc., 355105 (AC)

1-2-04 to 3-31-06, \$82,446.12

Considered by the Board: February 1, 2007

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 87105, the Board approved the refund as recommended by staff.

TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

PROPERTY TAX MATTERS

Board Roll Changes

2003, 2004, 2005 and 2006 State-Assessed Property Rolls

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board approved corrections to the 2003, 2004, 2005 and 2006 Board Rolls of State-Assessed Property as recommended by staff (Exhibit 3.1).

Exhibits to these minutes are incorporated by reference.

OFFERS-IN-COMPROMISE RECOMMENDATIONS

Action: Upon motion of Ms. Steel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Norris Strauch*, *Barry Albert*, *Karen Albert and Design Resources, Inc.*, *Douglas Kato*, *Trademark Communications*, and *Larry Beckman*; as recommended by staff.

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**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARING HELD MARCH 20, 2007**

M. J. Hannigan and S. A. Hannigan, 346086

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 20, 2007

Johnny L. Morris, 307080 (KH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Daugherty and Daugherty, Inc., 311686 (KH)

Final Action: Mr. Leonard moved that the interest be reduced to the amount of \$106.00 and that the petition be denied and redetermined as recommended by the Appeals Division. The motion was seconded by Ms. Steel but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Edvin Yonan, 222794 (KH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board recessed at 12:37 p.m. and reconvened at 1:35 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Fassel Mahmoud Elder, 197550 (KH)

10-1-98 to 2-28-02, \$137,439.80 Tax, \$14,306.75 Penalty

For Petitioner: Jesse McClellan, Representative

Dan Davis, Representative

For Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is entitled to further adjustments to the audited measure of tax.

Whether petitioner was negligent.

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Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Jess James Gallegus, 235814, 252210 (CH)

7-1-99 to 6-30-03, \$00.00 Tax, \$416,015.97 Penalty

For Petitioner: Eric J. Kohn, Enrolled Agent

For Department: Robert Stipe, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Department has proven fraud by clear and convincing evidence.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

PUBLIC HEARINGS

Business Taxpayers' Bill of Rights Hearing

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Division, made introductory remarks and was available to answer questions regarding the Business Taxpayers' Bill of Rights Hearing.

Speakers: William Connell, All American Surfdog
Abe Golomb, Sales Tax Reduction Specialists
Roy E. Crawford, Heller Ehrman, LLP
Jesse McClellan, Associated Sales Tax Consultants
Dan Davis, Associated Sales Tax Consultants

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 3:40 p.m. and reconvened immediately in closed session with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 4:25 p.m. and reconvened immediately in open session with Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel present, Mr. Leonard absent.

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Property Taxpayers' Bill of Rights Hearing

Todd Gilman, Chief, Taxpayers' Rights and Equal Employment Division, was available to answer questions and made introductory remarks regarding the Property Taxpayers' Bill of Rights Hearing (Exhibit 3.2).

Speakers: Earnest Bostick
Paul Dirksen, City of West Sacramento
Melinda Mochel, California Department of Food & Agriculture

Proposed Amendments to Sales and Use Tax Regulation 1603, *Taxable Sales of Food Products*

Sharon Jarvis, Tax Counsel IV, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed revisions to Sales and Use Tax Regulation 1603, *Taxable Sales of Food Products* (Exhibit 3.3).

Speakers: Charles J. Moll, III, Attorney At Law, Winston & Strawn, LLP
Jonathan Barnato, Senior Legislative Director, Cal Restaurant Association

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard absent, the Board adopted the revised language to the regulation as recommended by staff and referred the regulation to the 15-day file.

Proposed Adoption of Sales and Use Tax Regulation 1671.1, *Discounts, Coupons, Rebates, and Other Incentives*

Robert Lambert, Acting Assistant Chief Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed adoption of Sales and Use Tax Regulation 1671.1, *Discounts, Coupons, Rebates, and Other Incentives* (Exhibit 3.4).

Speakers: Kristin Power, Vice President, Gov't Relations, CA Grocers Association
Heidi Barsuglia, Director, Gov't Affairs, CA Retailers Association

Action: Upon motion of Ms. Steel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard absent, the Board adopted the regulation as published.

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CHIEF COUNSEL MATTERS

RULEMAKING

Board of Equalization Rules for Tax Appeals, Chapter 3: Property Tax

Kristine Cazadd, Chief Counsel, Legal Department, and Robert Lambert, Acting Assistant Chief Counsel, Legal Department, made introductory remarks regarding the *Rules for Tax Appeals, Chapter 3: Property Tax* (Exhibit 3.5).

Action: Ms. Mandel moved that the Board approve alternative 3. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Mandel voting yes, Ms. Chu and Ms. Steel voting no, Mr. Leonard absent.

The Board deferred consideration of this matter.

Section 100 Change to Regulation

Regulation 1802, Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes

Jean Ogrod, Assistant Chief Counsel, Settlement Division, Legal Department, made introductory remarks regarding the section 100 change to Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes* (Exhibit 3.6).

Action: Upon motion of Ms. Yee, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard absent, the Board adopted the changes to the regulation as recommended by staff and referred the regulation to the 15-day file.

PROPERTY TAX

Board Consideration of Findings and Decisions

Hee Kim, Tax Counsel III, Appeals Division, Legal Department, made introductory remarks regarding the findings and decisions for High Desert Power Trust 2000-A (1127).

High Desert Power Trust 2000-A (1127), 359070

2006, \$470,600,000.00 Unitary Value

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Steel and Ms. Mandel voting yes, Ms. Chu abstaining, Mr. Leonard absent, the Board approved the Findings and Decision as recommended by staff.

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ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, except Ms. Chu and Ms. Steel abstaining on the approval of Board Meeting Minutes, Mr. Leonard absent, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 3.7).

Lynn Y. Floria, Business Taxes Representative, Norwalk District Office
Sherry L. Gibson, Business Taxes Representative, Bakersfield Branch Office
Robert N. Landes, Business Taxes Specialist I, Ventura District Office
Waymond Y. Lee, Tax Technician II, Van Nuys District Office
Rosemarie Munoz, Business Taxes Representative, Norwalk District Office
Mark Steinberg, Supervising Tax Auditor I, Oakland District Office

Action: Approve time extension to San Diego County to complete and submit 2007-08 Local Assessment Roll, pursuant to Revenue and Taxation Code section 155 (Exhibit 3.8).

Action: Approve the Board Meeting Minutes of November 15, 2006; November 20-21, 2006; and, December 12-13, 2006

BOARD COMMITTEE REPORTS**Legislative Committee**

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard absent, the Board approved the Legislative Committee report (Exhibit 3.9).

Property Tax Committee

Action: Upon motion of Ms. Chu, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard absent, the Board approved the Property Tax Committee report (Exhibit 3.10).

OTHER ADMINISTRATIVE MATTERS**Executive Director's Report**

Ramon Hirsig, Executive Director, provided an update regarding the Strategic Plan (Exhibit 3.11).

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Action: Upon motion of Ms. Yee, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard absent, the Board approved the Strategic Plan.

Ramon Hirsig, Executive Director, introduced Gill Haas, Chief, Investigations Division, who provided a status report of Retail Licensing Enforcement (Exhibit 3.12).

Chief Counsel Report

Jean Ograd, Acting Assistant Chief Counsel, provided an update regarding the status of Settlement Division (Exhibit 3.13).

Deputy Directors' Reports

Ramon Hirsig, Executive Director, introduced Karen Johnson, Deputy Director, Administration Department, who provided an update regarding Finance Letter No. 1-Board of Equalization-Individual Rate Building (Exhibit 3.14).

PUBLIC COMMENT

Speakers: David R. Doerr, Chief Tax Consultant, CAL Tax

Action: Upon motion of Ms. Chu, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard absent, the Board approved the budget augmentation.

Karen Johnson, Deputy Director, Administration Department, introduced Valerie Barzose, of the Department of Finance, who provided an update regarding Financial Information System for California (FI\$Cal) Project (Exhibit 3.15).

Karen Johnson, Deputy Director, Administration Department, provided an update regarding the Curtainwall Project.

Karen Johnson, Deputy Director, Administration Department, provided an update regarding the Budget (Exhibit 3.16).

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD MARCH 20, 2007

Fassel Mahmoud Elder, 197550 (KH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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Jess James Gallegus, 235814, 252210 (CH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Ms. Steel and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 5:35 p.m.

The foregoing minutes are adopted by the Board on June 1, 2007.

Note: The following cases were removed from the calendar prior to the meeting: *Bankruptcy Update – Comprehensive Report; Affiliated Funding Corporation, 317945; Downey Toy Company, 306793; Taiheiyo Cement USA, Inc., 332855*